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December 12, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 13, 2007

Case Number: TSO-0513

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX(hereinafter referred to as "the individual") to hold an access authorization¹ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The individual is employed by a DOE contractor in a position that requires him to hold an access authorization. In October 2006, the LSO conducted a personnel security interview (2006 PSI) with the individual after the individual reported that he had been arrested and charged with Aggravated Driving While Intoxicated (2006 DWI). After the PSI, the LSO referred the individual to a DOE psychiatrist for a forensic psychiatric examination. The DOE psychiatrist examined the individual in January 2007 and memorialized his findings in a report (Psychiatric Report or Exhibit (Ex.) 8). In the Psychiatric Report, the DOE psychiatrist opined that the individual suffers from Alcohol Dependence with Physiological Dependence, in Early Full Remission. *Id.* At the time of the 2007 examination, the DOE psychiatrist did not believe that the individual was either rehabilitated or reformed from his Alcohol Dependence. *Id.*

In June 2007, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (j) (hereinafter referred to as Criteria F and J respectively).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On July 16, 2007, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing within the time frame prescribed by the Part 710 regulations. At the hearing, nine witnesses testified. The LSO called one witness and the individual presented his own testimony and that of seven witnesses. In addition to the testimonial evidence, the LSO submitted 15 exhibits into the record; the individual tendered 11 exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion F relates to information that a person “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.30.” 10 C.F.R. § 710.8(f). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concern at Issue

As previously noted, the LSO cites two criteria as bases for suspending the individual's security clearance, Criteria F and J. With regard to Criterion F, the LSO cites inconsistent statements that the individual allegedly made to the DOE psychiatrist and the Personnel Security Specialist regarding the duration of his sobriety prior his 2006 DWI. As for Criterion J, the LSO relies on the DOE psychiatrist's opinion that the individual suffers from Alcohol Dependence and several other facts, among which are the following: (1) the individual was arrested and charged with Aggravated DWI in October 2006; (2) the individual's blood alcohol concentration (BAC) registered .208 after his arrest in October 2006; and (3) the individual's typical weekly alcohol consumption beginning in 2005 was one pint of hard liquor four nights a week and two pints of hard liquor on every Friday and Saturday night.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Criteria F and J. First, from a security standpoint, false statements made by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. TSO-0538), <http://oha.doe.gov/cases/security/tso0538.pdf>; *Personnel Security Hearing* (Case No. TSO-0443), <http://oha.doe.gov/cases/security/tso0443.pdf>; *Personnel Security Hearing* (Case No. TSO-0415), <http://oha.doe.gov/cases/security/tso0415.pdf>.

Second, the excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See* Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House.

IV. Findings of Fact

Sometime in 2005, the individual began consuming alcohol excessively. Transcript of Hearing (Tr.) at 158. By his own account, the individual was drinking one pint of hard liquor four times a week and two pints of hard liquor every Friday and Saturday night. *Id.*

at 158-159. At various times, the individual attempted to stop drinking on his own but was unsuccessful in his efforts. *Id.* at 169. By the summer of 2006, the individual became very concerned about his alcohol consumption. Ex. 8 at 2. He started experiencing blackouts during his periods of heavy drinking and began to irritate his family and friends when he placed telephone calls to them while he was in an inebriated state. *Id.* In July 2006, he approached his first-line supervisor and disclosed that he had a problem with alcohol and needed assistance. Ex. 14 at 17; Tr. at 74. Shortly thereafter, he informed the LSO that he would be seeking alcohol treatment. Ex. 11.

The individual eventually was referred to the Employee Assistance Program (EAP) at his place of employment. Ex. 8 at 3. He met with an EAP Counselor on August 14, 2006, and executed a Mandatory Recovery Agreement on the same day. Tr. at 108; Ex. J. The Mandatory Recovery Agreement required the individual to: (1) attend an Intensive Outpatient Program (IOP), (2) maintain total abstinence from alcohol, (3) provide, upon request, breath samples for random alcohol testing, (4) obtain alcohol counseling, (5) attend Alcoholics Anonymous (AA) meetings, and (6) meet monthly with an EAP Counselor. Ex. J. Because the individual did not have the financial means to enroll in the IOP, the EAP Counselor allowed the individual to forego this requirement. Tr. at 118. The individual adhered to the terms of the Mandatory Recovery Agreement until October 20, 2006.

The individual claimed that on October 20, 2006, he was experiencing substantial stress at work and in his personal life. Ex. 14 at 14, 20-21. He decided to take a drive to alleviate his stress, and at some point stopped his vehicle, purchased a fifth of vodka, and proceeded to drink the vodka while driving. Ex. 8 at 4. A police officer stopped the individual's vehicle after observing that the individual was driving erratically. *Id.* The individual was arrested because he was unable to perform field sobriety tests, and he was immediately transported to the police station where he agreed to provide a blood sample. *Id.* The individual's blood test revealed a blood-alcohol concentration of .208 and he was then charged with Aggravated DWI. *Id.*

The individual's consumption of alcohol on October 20, 2006, violated the terms of his Mandatory Recovery Agreement and necessitated the execution of a new agreement. The individual entered into a new Mandatory Recovery Agreement on October 25, 2006. Ex. K. The EAP Counselor decided that the individual's participation in an IOP was an essential component of the Mandatory Recovery Agreement because of the relapse that led to the 2006 DWI.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).³ After due

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the

deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion F

The LSO's Criterion F concerns relate to inconsistent statements made by the individual regarding the duration of his sobriety prior to his 2006 DWI. Specifically, the individual told the Personnel Security Specialist during the 2006 PSI that he had abstained from alcohol from August 3, 2006, until October 20, 2006. In contrast, when he met with the DOE psychiatrist in January 2007, the individual told the DOE psychiatrist that his sobriety lasted about one month after which he went "back to his old habits." Ex. 8 at 8.

At the hearing, the individual testified credibly that he had abstained completely from alcohol between August 3, 2006, and October 20, 2006. Tr. at 167-168. He remembered telling the DOE psychiatrist that in the past when he tried to abstain from alcohol on his own, he would fall back into his old habits within a month. *Id.* at 169. To demonstrate that he did, in fact, maintain his abstinence in September 2006, the individual submitted the negative results of random alcohol tests for the period in question. *See* Ex. A. In addition, the individual offered the testimony of his EAP Counselor who confirmed the individual's abstinence between August 2006 and the night of his DWI on October 20, 2006. Tr. at 110.

The DOE psychiatrist listened to all the testimony before testifying himself at the hearing. He opined that a misunderstanding on either the individual's part or his part led to the inconsistent responses at issue. The DOE psychiatrist decided at the hearing that the individual meant to convey that he had resumed drinking within a month during those times when he had tried to abstain on his own prior to August 2006. *Id.* at 211.

After carefully considering the individual's testimony and evaluating his demeanor at the hearing, I find that statement that the individual made to the DOE psychiatrist that was inconsistent with the statement that the individual made to the Personnel Security Specialist was inadvertent and the result of a misunderstanding. I therefore find that the individual did not deliberately misrepresent significant information to the DOE psychiatrist during the psychiatric examination in January 2007. As a consequence, I find that the Criterion F security concerns are mitigated.

B. Criterion J

1. The Diagnosis of Alcohol Dependence

The individual does not contest that he suffered from Alcohol Dependence under the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised. The central question before me is whether the individual has presented convincing evidence that he is adequately reformed or rehabilitated from his Alcohol Dependence.

2. Rehabilitation and Reformation

a. The Individual's Testimony and Documentary Evidence

At the hearing, the individual testified convincingly that he has not consumed alcohol since October 20, 2006. Tr. at 178. He explained that when he received his 2006 DWI, he had not acquired the tools necessary, after only six weeks of abstinence, to resist the temptation of alcohol. *Id.* at 171. He then related how important the six-week IOP has been in helping his recovery efforts. He explained specifically that the IOP⁴ has helped him to manage his stress and has equipped him with relapse prevention tools. *Id.* at 172. He related that since his 2006 DWI, he has experienced significant stress in his life but has not resorted to alcohol because of the coping mechanisms that he learned at the IOP. *Id.* The individual also testified about his post-treatment experience. The individual related that he meets on Saturday mornings for breakfast with four other IOP participants (IOP breakfast group) to discuss alcohol-related issues. *Id.* at 197. In addition to his weekly breakfast meetings, the individual calls or text-messages one member of the IOP breakfast group at least twice a week to discuss challenges relating to remaining abstinent from alcohol.⁵ *Id.* at 201. He testified that he intends to attend the IOP breakfast group meetings indefinitely. *Id.* The individual also attends monthly counseling sessions with his EAP Counselor. He added that while he satisfactorily completed the terms of his Mandatory Recovery Agreement on August 14, 2007, he elected to enter into another one-year recovery agreement with the EAP on October 25, 2007, so he can continue to benefit from the expertise of the EAP Counselor. *Id.* at 200; Ex. K.

Apart from his rehabilitative efforts, the individual testified credibly that other changes in his personal life and new responsibilities have solidified his resolve to abstain from alcohol permanently. *Id.* at 204. Specifically, he is now married, is a stepfather and a new homeowner. *Id.* at 175-176, 199. He opined that his new wife is a great source of support and strength to him in his recovery efforts. In addition, the individual is working at a second job where he frequently sees persons who have consumed too much alcohol. The individual testified that observing the behavior of persons who are intoxicated has also strengthened his resolve to remain abstinent. *Id.* at 176.

⁴ The individual submitted into evidence a copy of his Certificate of Completion and a letter from the Director of the IOP to corroborate his successful completion of the alcohol treatment program. See Exs. D and F.

⁵ The EAP Counselor testified that the IOP breakfast group is a suitable substitute for AA. *Id.* at 133.

In addition to his testimony, the individual submitted documentary evidence to show his commitment to abstinence. First, he tendered the negative test results from 13 random alcohol tests that he took between October 25, 2006, and October 11, 2007. Exs. A, B, and C. Second, he submitted a letter from the Director of his IOP program who asserts that the individual demonstrated a “high level of compliance and motivation” during the program and that she has met with, and spoken to, the individual on several occasions since he completed the IOP in December 2006. Ex. F.

b. The Wife’s Testimony

The individual’s wife testified that she and the individual dated during the period of his heavy drinking and married in February 2007. Tr. at 15, 20. Beginning in July 2006, the individual’s wife complained to him that they were not spending enough quality time because of his drinking. *Id.* According to the wife, the IOP changed the individual’s “whole life.” *Id.* at 27. She explained that the IOP helped the individual realize that alcohol was adversely affecting his life, and it provided him with the tools to remain sober. *Id.* at 27-28. She added that the IOP breakfast group has have been very supportive in the individual’s efforts to remain sober. *Id.* at 32. She commented that she attends the IOP breakfast groups with the individual so she knows that the group discusses alcohol and the challenges that they confront in their struggle to remain sober. *Id.* at 27. She stated that she would not have married the individual in February 2007 had she not been convinced that he had stopped drinking. *Id.* at 33. She related further that the two of them have discussed that the individual needs to remain sober so he does not adversely impact his stepchildren. *Id.* at 39. Finally, she advised that since the individual no longer drinks, he has more self-esteem, is no longer depressed, and spends quality time with his family, her, and the children. *Id.* at 43.

c. The IOP Participant’s Testimony

One of the persons who participated in the IOP with the individual and who is a current member of the IOP breakfast group provided probative information about the individual’s recovery efforts to date. First, she explained that the IOP was a 12-week program during which the participants met three times per week for two hours per session. *Id.* at 51. According to the IOP participant, the treatment program focused on relapse prevention, communication skills, coping mechanisms and sobriety maintenance. *Id.* The IOP participant explained that five graduates of the IOP banded together to support each others’ sobriety. *Id.* at 54. She explained that the five meet on Saturday mornings for breakfast, and engage in other social activities during other times of the week. *Id.* She testified that she knows drinking is no longer an option for the individual because the individual has assumed new responsibility with his recent marriage. *Id.* at 58. She explained that there is a very strong bond among the breakfast group members and that the structure provided by their regular meetings assists all of the members to maintain their sobriety. *Id.* at 60.

d. The EAP Counselor's Testimony

The EAP Counselor testified that he is a licensed clinical psychologist. *Id.* at 107. He first met the individual on August 14, 2006, after the individual sought assistance on his own for issues relating to his alcohol consumption. *Id.* at 108. He explained that the individual entered into a Mandatory Recovery Agreement on the day they met. The Mandatory Recovery Agreement placed a number of requirements on the individual, including his participation in the IOP. *Id.* at 116. Because the individual did not have the financial means to attend the IOP, the EAP Counselor allowed the individual to meet with a substance abuse counselor instead. *Id.* at 118. After the individual was arrested for DWI in October 2006, the EAP Counselor mandated the individual's participation in IOP and required him to execute a new Mandatory Recovery Agreement. *Id.* at 119, 123. The EAP Counselor testified that after the individual's 2006 DWI, the individual "stepped up to the plate," he scrupulously followed the conditions of his Mandatory Recovery Agreement, maintained contacts with the EAP Counselor, and met regularly with others in his IOP peer group. *Id.* at 133, 135. The EAP Counselor gave the individual a very good prognosis for maintaining his sobriety, explaining that the individual elected to execute another one-year recovery agreement which, according to the EAP Counselor, demonstrates the individual's commitment to abstinence. *Id.* at 135.

e. The DOE Psychiatrist's Testimony

The DOE psychiatrist stated in his Psychiatric Report that the individual could not be considered adequately rehabilitated until he achieved one or two years of sobriety, occasionally attended AA meetings, and met monthly with his EAP Counselor and weekly with a substance abuse counselor. Ex. 8 at 10. After listening to the testimony of all the witnesses in the case, the DOE psychiatrist decided that the individual had demonstrated adequate evidence of rehabilitation from his Alcohol Dependence after 12 months of sobriety, his completion of the IOP, and his continued therapy with the EAP Counselor. *Id.* at 231. The DOE psychiatrist opined that the individual has a strong support network in his wife, his IOP breakfast group, and his EAP Counselor. *Id.* at 228, 230.

3. Hearing Officer Evaluation of Evidence

In the administrative review process, Hearing Officers accord great deference to the expert opinions of psychiatrists and other mental health professionals regarding the issue of rehabilitation or reformation. See *Personnel Security Hearing* (Case No. TSO-0215), <http://oha.doe.gov/cases/security/tso0215.pdf>, *Personnel Security Hearing* (Case No. 0466), <http://oha.doe.gov/cases/security/tso0466.pdf>. In this case, I accorded substantial weight to the revised opinion of the DOE psychiatrist who testified at the hearing that the individual had achieved the state of rehabilitation and reformation. In addition, I accorded much weight to the EAP Counselor, a licensed clinical psychologist, who testified that the individual is committed to sobriety. Moreover, I determined that the testimonial and documentary evidence weigh heavily in the individual's favor. First, the individual appears to be internally motivated to address his alcohol problem as evidenced by the fact that he voluntarily sought professional assistance, and promptly reported his decision to enter an alcohol treatment program to the LSO. Second, the individual convinced me that

his new responsibilities as husband, step-father and homeowner have strengthened his resolve to maintain his abstinence. Third, I was convinced from the individual's testimony, and that of his wife and his fellow IOP participant, that the individual has recognized that he has an alcohol problem, has changed his attitude towards drinking, and is committed to sobriety. Furthermore, the individual provided corroborating evidence to demonstrate that he abstained from alcohol for 12 months, is committed to attending the breakfast group indefinitely, and will maintain his relationship with the EAP Counselor for another year. In sum, I find that the individual has provided adequate evidence that he is rehabilitated from his Alcohol Dependence. Accordingly, I find that the individual has mitigated Criterion J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raised serious security concerns under Criteria F and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth sufficient evidence to mitigate the security concerns associated with both criteria at issue. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: December 12, 2007